

Clarence M. Belnavis, OSB #94246  
Email Address: cbelnavis@laborlawyers.com  
Rachelle Hong Barton, OSB #05040  
Email Address: rbarton@laborlawyers.com  
FISHER & PHILLIPS LLP  
111 SW Fifth Avenue, Suite 1250  
Portland, Oregon 97204  
(503) 242-4262 Telephone  
(503) 242-4263 Facsimile  
Email Address: pdx@laborlawyers.com

Attorneys for Defendant

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

VIDEO ONLY, INC.,

Defendant.

MICHAEL GONZALES, JAYSON LEWIS,

Plaintiff-Intervenors,

v.

VIDEO ONLY, INC.,

Defendant.

Case No. CV-06-1392-KI

DEFENDANT'S SUPPLEMENTAL  
RESPONSE TO  
PLAINTIFF EEOC'S FIRST  
SET OF INTERROGATORIES

Page 1     **DEFENDANT'S SUPPLEMENTAL RESPONSE TO  
PLAINTIFF EEOC'S FIRST SET OF  
INTERROGATORIES**

Portland 67976.1

Healy Declaration  
Exhibit N  
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FISHER & PHILLIPS LLP  
111 SW Fifth Ave., Ste. 1250  
Portland, Oregon 97204  
(503) 242-4262

Pursuant to FRCP 26(e), defendant Video Only, Inc. ("Video Only") provides a supplementation of its *Response to Plaintiff's First Set of Interrogatories*. Video Only hereby incorporates all objections previously asserted in its *Responses to Plaintiff's First Set of Interrogatories*.

### **RESPONSES TO INTERROGATORIES**

**INTERROGATORY NO. 1:** Describe all equal employment opportunity training given to managers, supervisors and employees of Defendant's Oregon stores, from January 1, 2000 to date. The answer to this interrogatory should include but is not limited to training regarding sexual harassment, harassment based on race and/or sex; and retaliation for engaging in protected EEO activity. Your answer should include a specific description of the type of training, date and place of training, who conducted the training and who attended.

**ANSWER TO INTERROGATORY NO. 1:** Video Only objects to this interrogatory on the basis that it is overly broad in scope and time and not reasonably calculated to lead to the discovery of admissible evidence. Video Only further narrows this interrogatory to apply only from January 1, 2003 to the present, and only with respect to training for harassment based on race, national origin, religion, and retaliation. Without waiving any of its objections, Video Only responds that on January 31, 2006 and February 1, 2006, Oregon Area Managers, Store Managers, and Sales Managers received training on how to recognize, investigate and remedy unlawful harassment in the workplace. The training was conducted by Larry Amburgey at the law offices of Amburgey & Rubin, P.C.

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**INTERROGATORY NO. 2:** Describe each complaint, charge, allegation and/or lawsuit concerning harassment based on race and/or sex, sexual harassment, racial bias, and/or retaliation whether made formally or informally, by any applicant, former or current employee at any of Defendant's Oregon stores from January 1, 2000 to date. Include in your response; the name of the complainant, the allegation made, the date of the complaint and the name of the person alleged to have engaged in harassment based on race and/or sex, sexual harassment, assault, battery, racial bias, and/or retaliation.

**ANSWER TO INTERROGATORY NO. 2:** Video Only objects to this interrogatory on the basis that it is overly broad in scope and time, not reasonably calculated to lead to the discovery of admissible evidence, and vague with respect to the terms "complaint" and "allegation." Video Only further objects on the basis that this interrogatory seeks information protected by the attorney-client and/or work product privilege. Video Only further narrows this interrogatory to apply only from January 1, 2003 to the present. Without waiving any of its objections, Video Only responds as follows: plaintiff-intervenor Michael Gonzales, plaintiff-intervenor Jayson Lewis, Dave Guralnick (retaliation; EEOC charge no. 551-2006-02741), and Travis Herron (retaliation; EEOC charge no. 551-2006-02714).

**INTERROGATORY NO. 3:** Identify each person with primary responsibility for responding to each complaint, charge, allegation or lawsuit identified in response to Interrogatory No. 2, and describe each action the person with primary responsibility to respond took and when such action was taken.

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**ANSWER TO INTERROGATORY NO. 3:** Video Only objects to this interrogatory on the basis that seeks information protected by the attorney-client privilege and/or work product doctrine. Video Only also objects on the basis that this interrogatory is overly broad in scope and time, not reasonably calculated to lead to the discovery of admissible evidence, and vague with respect to the terms “complaint” and “allegation.” Without waiving any of its objections, Video Only responds that the person primarily responsible for dealing with the complaints identified in Interrogatory No. 2 is James Lothian. Within the same month that Mr. Lothian learned of Mr. Lewis and Mr. Gonzales’ complaints/allegations by way of a November 1, 2005 letter from Andrew Altschul, Mr. Lothian called Lynn McKinney to investigate the merit of the Mr. Lewis and Mr. Gonzales’ complaints/allegations. Shortly thereafter, Mr. Lothian retained Amburgey & Rubin to represent Video Only. With respect to Mr. Guralnick and Mr. Herron, as soon as Mr. Lothian received these individuals’ EEOC complaints, he turned them over to counsel (John Chun at The Summit Law Group).

**INTERROGATORY NO. 4:** Identify each current or former employee of Defendant at the Jantzen Beach Portland, Oregon store from January 1, 2000 to date, and provide their race, position, last known address and telephone number for each such person.

**ANSWER TO INTERROGATORY NO. 4:** Video Only objects to this interrogatory on the basis that it is overly broad in scope and time, and not reasonably calculated to lead to the discovery of admissible evidence. Video Only further objects on the basis that this interrogatory requires the disclosure of third party information of a nature that third parties, including current and former employees, would normally not expect an employer to disclose. Video Only further narrows this interrogatory to apply only from January 1, 2003 to the present. Without waiving any of its objections, Video Only responds as follows: Video Only is in the process of gathering

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information to respond to this interrogatory. An answer will be provided by Wednesday, April 4, 2007. Video Only does not know the race of its employees, so its answer will not include that information.

**INTERROGATORY NO. 5:** Describe in detail the factual and legal basis for the assertion in defendant's answer filed December 1, 2006 that "EEOC's claims are barred, in whole or in part, because Video Only exercised reasonable care to prevent and correct any harassing or discriminatory behavior, and the charging parties unreasonably failed to take advantage of any preventative or corrective opportunities provided by Video Only to avoid harm otherwise."

**ANSWER TO INTERROGATORY NO. 5:** Video Only objects to this interrogatory on the basis that it seeks information protected by the attorney-client privilege and/or work product doctrine. Without waiving any of its objections, Video Only responds that it had policies in place in its handbook that included procedures for employees to complain about discrimination or harassment, but plaintiff-intervenors never utilized these procedures. Further, the times Video Only heard of any issues plaintiff-intervenors alleged they were having in the workplace were not always contemporaneous with the occurrence of the alleged issues. Therefore, Video Only had little or no opportunity to be pro-active in addressing the alleged issues.

**INTERROGATORY NO. 6:** Describe in detail the factual and legal basis for the assertion in defendant's answer filed December 1, 2006 that "The Charging Parties' damages, if any, were caused by their acts and omissions."

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**ANSWER TO INTERROGATORY NO. 6:** Video Only objects to this interrogatory on the basis that it seeks information protected by the attorney-client privilege and/or work product doctrine. Without waiving any of its objections, Video Only responds as follows: please see response to Interrogatory No. 5. In addition, on information and belief, Video Only responds that plaintiff-intervenors themselves have engaged in the very conduct they complain of, including writing racial and/or religious graffiti on the break room wall, making anti-semitic statements, and making racially derogatory statements. The individuals who would have further information on this conduct are listed in our initial disclosures.

**INTERROGATORY NO. 7:** Describe in detail Video Only's EEO complaint process, meaning complaints regarding discrimination, harassment and retaliation, from January 1, 2000 to present. Your answer should include the avenues that are available to each employee to lodge a complaint and the expected response to any such complaint. Your answer should include, but is not limited to, explanation regarding to whom an employee can complain, how a complaint is investigated, who is authorized to conduct investigations, the requirement to document, the obligation of supervisors and managers when they witness discrimination, the requirement to notify human resources or the corporate office, the criteria for determining whether the complaint is substantiated, and how an employee who files a harassment claim is notified of the results of any investigation.

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**ANSWER TO INTERROGATORY NO. 7:** Pursuant to FRCP 33(d), Video Only

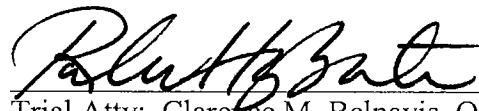
responds that plaintiff can derive or ascertain the answer to this interrogatory from Video Only's handbook and the materials provided by Amburgey & Rubin during its Video Only training on January 31, 2006 and February 1, 2006. The handbook was produced to plaintiff in Video Only's initial disclosures. Specifically, please refer to pages bates stamped 100266 to 100268 and 100306 to 100308 from defendant's initial disclosures. Also note that the complaint process for retaliation is the same as for discrimination and harassment. The Amburgey & Rubin training materials are produced herewith and bates stamped 100560 through 100606.

**INTERROGATORY NO. 8:** Identify every person who defendant consulted or who assisted defendant in drafting its answers to these interrogatories, and state which answer each individual was consulted about or provided assistance on.

**ANSWER TO INTERROGATORY NO. 8:** Video Only objects to this interrogatory on the basis that it seeks information protected by the attorney-client privilege and/or work product doctrine. Without waiving any of its objections, Video Only responds that the following individuals were consulted or assisted in drafting all of the answers to these interrogatories: Peter Edwards, James Lothian, Clarence Belnavis, and Rachelle Hong Barton.

DATED: March 28, 2007

FISHER & PHILLIPS LLP



Trial Atty: Clarence M. Belnavis, OSB #94246  
 Rachelle Hong Barton, OSB #05040  
 FISHER & PHILLIPS LLP  
 (503) 242-4262  
 Attorneys for Defendant

Healy Declaration  
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**VERIFICATION**

I, JAMES LOTHIAN, declare:

I am the General Manager of VIDEO ONLY, Inc. and I am authorized to make this verification on its behalf.

I have read Defendant Video Only's *Supplemental Response to Plaintiff EEOC's First Set of Interrogatories* and know its contents. To the extent I have personal knowledge of the matters set forth therein, the same are true and correct. Insofar as said matters are a composite of the information of many individuals, I do not have personal knowledge concerning all of the information contained in said responses but I am informed and believe that the information set forth therein for which I lack personal knowledge is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23 day of March, 2007, in Seattle, Washington

  
\_\_\_\_\_  
JAMES LOTHIAN



CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEFENDANT'S SUPPLEMENTAL RESPONSE TO PLAINTIFF EEOC'S FIRST SET OF INTERROGATORIES** as indicated below on:

Teri Healy  
Senior Trial Attorney  
Equal Employment Opportunity Commission  
Seattle District Office  
909 First Ave., Suite 400  
Seattle, WA 98104

Attorney for Plaintiff

Andrew M. Altschul  
Altschul Law Office PC  
117 SW Taylor St., Ste 200  
Portland, OR 97204

Attorney for Plaintiff-Intervenors  
Michael Gonzales & Jayson Lewis

☐

**Fax and Mail:** by faxing to the attorney at the fax number as above stated, which is the last-known fax number for the attorney's office, on the date set forth below; and by mailing a full, true, and correct copy in a sealed envelope with postage prepaid thereon, addressed as above stated, which is the last known address of the attorney, and depositing it with the United States Postal Service at Portland, Oregon, on the date set forth below.

\_\_\_\_\_ **Plus E-mail\***

☒

**Regular or Priority Mail:** by mailing a full, true, and correct copy thereof in a sealed envelope with postage prepaid thereon, addressed as above stated, which is the last-known office address of the attorney, and {check one that applies}:

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Depositing it with the United States Postal Service at Portland, Oregon, on the date set forth below. ☒ **Plus E-mail\***

☐

Sending it via priority mail service on the date set forth below. \_\_\_\_\_ **Plus E-mail\***

☐

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\_\_\_\_\_ **Plus E-mail\***

\*E-mail: Where checked above, e-mail was effected by causing a full, true and correct copy thereof to be transmitted to the attorney in WordPerfect or Word format via electronic correspondence to the attorney's last-known e-mail address in accordance with United States District Court Local Rule 5.2(b).

DATED: March 28, 2007



Clarence M. Belnavis, OSB #94246

Rachelle Hong Barton, OSB #05040

FISHER & PHILLIPS LLP

(503) 242-4262

Attorneys for Defendant

Healy Declaration  
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**DEFENDANT'S SUPPLEMENTAL RESPONSE TO  
PLAINTIFF EEOC'S FIRST SET OF  
INTERROGATORIES**

Portland 67976.1

FISHER & PHILLIPS LLP  
111 SW Fifth Ave., Ste. 1250  
Portland, Oregon 97204  
(503) 242-4262

Clarence M. Belnavis, OSB #94246  
Email Address: cbelnavis@laborlawyers.com  
Rachelle Hong Barton, OSB #05040  
Email Address: rbarton@laborlawyers.com  
FISHER & PHILLIPS LLP  
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Portland, Oregon 97204  
(503) 242-4262 Telephone  
(503) 242-4263 Facsimile  
Email Address: pdx@laborlawyers.com

Attorneys for Defendant

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

VIDEO ONLY, INC.,

Defendant.

MICHAEL GONZALES, JAYSON LEWIS,

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DEFENDANT'S REVISED  
SUPPLEMENTAL RESPONSE TO  
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Portland 68331.1

FISHER & PHILLIPS LLP  
111 SW Fifth Ave., Ste. 1250  
Portland, Oregon 97204  
(503) 242-4262

Pursuant to FRCP 26(e), defendant Video Only, Inc. ("Video Only") provides a revised supplementation of its *Response to Plaintiff's (EEOC) First Set of Interrogatories*. Video Only hereby incorporates all objections previously asserted in its *Responses to Plaintiff's First Set of Interrogatories* and its *Supplemental Response to Plaintiff's First Set of Interrogatories*.

### **RESPONSES TO INTERROGATORIES**

**INTERROGATORY NO. 4:** Identify each current or former employee of Defendant at the Jantzen Beach Portland, Oregon store from January 1, 2000 to date, and provide their race, position, last known address and telephone number for each such person.

**ANSWER TO INTERROGATORY NO. 4:** Video Only objects to this interrogatory on the basis that it is overly broad in scope and time, and not reasonably calculated to lead to the discovery of admissible evidence. Video Only further objects on the basis that this interrogatory requires the disclosure of third party information of a nature that third parties, including current and former employees, would normally not expect an employer to disclose. Video Only further narrows this interrogatory to apply only from January 1, 2003 to the present. Without waiving any of its objections, Video Only responds as follows: Video Only is producing a list that includes the requested information to the best of Video Only's knowledge. (See attached documents, bates stamped 100760 to 100763.) Please note that Video Only does not know the race of its employees, so it has provided its best guess as to that information.

**INTERROGATORY NO. 5:** Describe in detail the factual and legal basis for the assertion in defendant's answer filed December 1, 2006 that "EEOC's claims are barred, in whole or in part, because Video Only exercised reasonable care to prevent and correct any harassing or discriminatory behavior, and the charging parties unreasonably failed to take advantage of any preventative or corrective opportunities provided by Video Only to avoid harm otherwise."

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**ANSWER TO INTERROGATORY NO. 5:** Video Only objects to this interrogatory on the basis that it seeks information protected by the attorney-client privilege and/or work product doctrine. Video Only further objects to this interrogatory to the extent that it is a contention interrogatory, prohibited the L.R. 33.1(d). Without waiving any of its objections, Video Only responds that it had policies in place in its handbook that included procedures for employees to complain about discrimination or harassment, but plaintiff-intervenors never utilized these procedures. Further, the times Video Only heard of any issues plaintiff-intervenors alleged they were having in the workplace were not always contemporaneous with the occurrence of the alleged issues. Therefore, Video Only had little or no opportunity to be pro-active in addressing the alleged issues.

**INTERROGATORY NO. 6:** Describe in detail the factual and legal basis for the assertion in defendant's answer filed December 1, 2006 that "The Charging Parties' damages, if any, were caused by their acts and omissions."

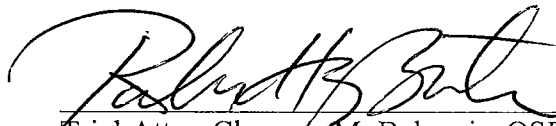
**ANSWER TO INTERROGATORY NO. 6:** Video Only objects to this interrogatory on the basis that it seeks information protected by the attorney-client privilege and/or work product doctrine. Video Only further objects to this interrogatory to the extent that it is a contention interrogatory, prohibited the L.R. 33.1(d). Without waiving any of its objections, Video Only responds as follows: please see response to Interrogatory No. 5. In addition, on information and belief, Video Only responds that plaintiff-intervenors themselves have engaged in the very conduct they complain of, including writing racial and/or religious graffiti on the break room wall, making anti-semitic statements, and making racially derogatory statements. The individuals who would have further information on this conduct are listed in our initial disclosures.

**INTERROGATORY NO. 8:** Identify every person who defendant consulted or who assisted defendant in drafting its answers to these interrogatories, and state which answer each individual was consulted about or provided assistance on.

**ANSWER TO INTERROGATORY NO. 8:** Video Only objects to this interrogatory on the basis that it seeks information protected by the attorney-client privilege and/or work product doctrine. Without waiving any of its objections, Video Only responds that the following individuals were consulted or assisted in drafting all of the answers to these interrogatories: Peter Edwards, James Lothian, Clarence Belnavis, and Rachelle Hong Barton. Wade Forner was consulted in drafting the answer to Interrogatory No. 4.

DATED: April 6, 2007

FISHER & PHILLIPS LLP



Trial Atty: Clarence M. Belnavis, OSB #94246  
Rachelle Hong Barton, OSB #05040  
FISHER & PHILLIPS LLP  
(503) 242-4262  
Attorneys for Defendant

**VERIFICATION**


I, JAMES LOTHIAN, declare:

I am the General Manager of VIDEO ONLY, Inc. and I am authorized to make this verification on its behalf.

I have read Defendant Video Only's *Revised Supplemental Response to Plaintiff EEOC's First Set of Interrogatories* and know its contents. To the extent I have personal knowledge of the matters set forth therein, the same are true and correct. Insofar as said matters are a composite of the information of many individuals, I do not have personal knowledge concerning all of the information contained in said responses but I am informed and believe that the information set forth therein for which I lack personal knowledge is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6<sup>th</sup> day of April, 2007, in Seattle, Washington

  
JAMES LOTHIAN

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEFENDANT'S REVISED SUPPLEMENTAL RESPONSE TO PLAINTIFF EEOC'S FIRST SET OF INTERROGATORIES** as indicated below on:

Teri Healy  
Senior Trial Attorney  
Equal Employment Opportunity Commission  
Seattle District Office  
909 First Ave., Suite 400  
Seattle, WA 98104

Attorney for Plaintiff

Andrew M. Altschul  
Altschul Law Office PC  
117 SW Taylor St., Ste 200  
Portland, OR 97204

Attorney for Plaintiff-Intervenors  
Michael Gonzales & Jayson Lewis

☐

**Fax and Mail:** by faxing to the attorney at the fax number as above stated, which is the last-known fax number for the attorney's office, on the date set forth below; and by mailing a full, true, and correct copy in a sealed envelope with postage prepaid thereon, addressed as above stated, which is the last known address of the attorney, and depositing it with the United States Postal Service at Portland, Oregon, on the date set forth below.

\_\_\_\_\_ **Plus E-mail\***

☒

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☒ Depositing it with the United States Postal Service at Portland, Oregon, on the date set forth below. ☒ **Plus E-mail\***

☐ Sending it via priority mail service on the date set forth below. \_\_\_\_\_ **Plus E-mail\***

☐

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DATED: April 6, 2007



Clarence M. Belnavis, OSB #94246

Rachelle Hong Barton, OSB #05040

FISHER & PHILLIPS LLP

(503) 242-4262

Attorneys for Defendant

Healy Declaration  
Exhibit N

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**DEFENDANT'S SUPPLEMENTAL RESPONSE TO  
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FISHER & PHILLIPS LLP  
111 SW Fifth Ave., Ste. 1250  
Portland, Oregon 97204  
(503) 242-4262